

Government Decree 288/2011 (22 December)

on the detailed rules for the application of sanctions which may be imposed by the Public Procurement Arbitration Board and on the administrative service fee to be paid to the Public Procurement Arbitration Board

The Government, on the basis of the empowerment of Article 182(1) point 5 of the Act CVIII of 2011 on Public Procurement and acting within its competence according to Article 15(3) of the Fundamental Law of Hungary, lays down the following:

1. Administrative service fee

Article 1

1. Applications for a proceeding of the Public Procurement Arbitration Board – including review procedures related to qualified public procurements, qualified contract award procedures, procurements in the field of defence and contract award procedures in the field of defence – shall be subject to the payment of an administrative service fee, which is, in case of public procurement contracts equalling or exceeding the EU threshold, 1 % of the estimated value of the contract award procedure or, in case of subdivision of the contract into lots, 1 % of the value of the lot subject to the review procedure, but not more than HUF 25,000,000 (twenty-five million forints); in case of public procurements not reaching the EU threshold and design contests, 1 % of the estimated value of the contract award procedure or, in case of subdivision of the contract into lots, 1 % of the value of the lot subject to the review procedure, but not less than HUF 200,000 (two hundred thousand forints) and not more than HUF 6,000,000 (six million forints).

2. In cases pursuant to paragraph 1, the value of the administrative service fee, in line with the number of the defined elements of the plea, shall be:

(a) where reference is made to 1-3 elements, the value of the fee equals to the amount calculated according to paragraph 1;

(b) where reference is made to 4-6 elements: the value of the fee equals to 125 % of the amount calculated according to paragraph 1;

(c) where reference is made to 7-10 elements: the value of the fee equals to 150 % of the amount calculated according to paragraph 1;

(d) where reference is made to 11-15 elements: the value of the fee equals to 175 % of the amount calculated according to paragraph 1;

(e) where reference is made to 16 or more elements: the value of the fee equals to twice the amount calculated according to paragraph 1;

Article 2

1. A supporting document showing that the fee has been paid shall be attached to the application. If the estimated value of the public procurement cannot be learnt by the applicant on the basis of the documents of the contract award procedure subject to the review procedure, he shall impart this fact to the Public Procurement Arbitration Board in his application for review procedure. In such case, the Public Procurement Arbitration Board informs the applicant – on the basis of the information already available – of the amount of the estimated value serving as the basis of the administrative service fee in an invitation to submit missing information pursuant to Article 139 (2) of the PPA.

2. In order to establish the estimated value – in case of subdivision of the contract into lots, the estimated value of the lot subject to the review procedure – pursuant to Article 1(1), the Public Procurement Arbitration Board may request the contracting authority to supply information and the contracting authority shall be bound to provide it not later than within two working days.

3. If the applicant supplements his application for review procedure with further issues in the course of the procedure, he shall be bound to pay, at the request of the Public Procurement Arbitration Board, the amount of the administrative service fee related to the new issue (issues) as well. If the applicant fails to supplement the amount of the administrative service fee, the Public Procurement Arbitration Board shall not be obliged to deal with the new issues.

4. For the purposes of Article 1(2) and paragraph 3 of this Article, the term 'issue' shall mean a well-confined part of the application – supplemented if necessary – which contains the act of the contracting authority (the applicant) supposed illegal, an indication of the act of legislation or acts of legislation infringed, as well as the proposal (motion) for the decision of the Public Procurement Arbitration Board and the reasons therefor.

Article 3

1. Contrary to the provisions set out in Article 154(1) of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter referred to as: 'APS'), the Public Procurement Arbitration Board shall determine the administrative service fee in compliance with paragraphs 2 and 3, in its substantial decision, in the scope of the decision made on the procedural costs.

2. If the Public Procurement Arbitration Board, in its substantial decision closing the review case, applies the legal consequences stipulated by Article 152(2)(c)-(f) of the PPA, the part of the paid administrative service fee exceeding HUF 200,000 (two hundred thousand forints) shall be refunded to the applicant not later than within 8 days after sending of the substantial decision of the Public Procurement Arbitration Board. These HUF 200,000 (two hundred thousand forints) shall form part of the Public Procurement Authority's own revenue, and the way of its incurring is determined by the Public Procurement Arbitration Board according to the general rules pertaining to the procedural costs under the APS. In case of unfounded applications, the amount of the fee shall not be refunded; the applicant shall incur the full amount of the administrative service fee.

3. If the applicant requested the establishment of more than one infringements in his application for review procedure, but the Public Procurement Arbitration Board approves only a part of the application in its substantial decision, the amount of the administrative service fee to be refunded to the applicant shall be calculated by deducting the Public Procurement Authority's own revenue according to paragraph 3 and taking into consideration the proportion of the well-founded and the unfounded claims.

2. Prohibition

Article 4

1. The Public Procurement Arbitration Board shall state, pursuant to Article 152(2)(f) of the PPA, that an infringement has occurred and shall prohibit the tenderer, the subcontractor or any other entity (person) participating in the contract award procedure – taking into consideration the provisions set out in Article 152(5) of the PPA – for a period from half a year to three years, from participating in contract award procedures, if

(a) he has supplied false data or made a misrepresentation in the course of the procedure or in relation to the contract award procedure;

(b) the violation of the law committed by him has been ascertained by a final decision of the Public Procurement Arbitration Board at least twice within two years.

2. For the purposes of paragraph 1 and in the case specified in Article 152(3)(d) of the PPA, the Public Procurement Arbitration Board shall prohibit the tenderer, the subcontractor or any other entity (person) participating in the contract award procedure from participating in contract award procedures not only in the future, but also in the contract award procedure under review and any other contract award procedure in progress, as well as from concluding the contract, provided the results of the procedure have not been sent in the procedures concerned.

3. Fine

Article 5

1. Pursuant to Article 152(4) of the PPA, the Public Procurement Arbitration Board shall, in addition to the establishment of the infringement of law, impose a fine. Considering the provisions set out in Article 152(5) of the PPA, the amount of the fine shall not be more than fifteen per cent of the estimated value of the contract award procedure – or in case of subdivision of the contract into lots, the estimated value of the lot subject to the review procedure – , and in case of unlawful bypass of the contract award procedure not more than fifteen per cent of the contract value.

2. Where the Public Procurement Arbitration Board imposes a fine according to Article 152(3)(e) of the PPA, the amount of the fine shall, considering the provisions set out in Article 152(5) of the PPA, not be more than ten per cent of the estimated value of the contract award procedure or, in case of subdivision of the contract into lots, the estimated value of the lot subject to the review procedure.

4. Payment of the administrative service fee

Article 6

The amount of the administrative service fee shall be transferred to the Public Procurement Authority's appropriation allocation fund account (No: 10032000-01720361-00000000) held at the Hungarian State Treasury.

5. Final provisions

Article 7

This Decree shall enter into force on 1 January 2012, the provisions of this Decree shall be applied to public procurements started after its entering into force.